

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

OWEN LINO,  
CDCR #J-45685,

Plaintiff.

vs.

J. KELLERMAN, et al.:

## Defendants

Civil No. 10cv0449 MMA (PCI)

## ORDER:

**(1) GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTION FOR  
RECONSIDERATION: AND**

**(2) GRANTING IN PART  
PLAINTIFF'S MOTION FOR  
EXTENSION OF TIME TO FILE A  
FOURTH AMENDED COMPLAINT**

[ECF Nos. 26, 27]

On February 26, 2010, Owen Lino (“Plaintiff”), a state prisoner currently incarcerated at Kern Valley State Prison, and proceeding pro se, submitted a civil action pursuant to 42 U.S.C. § 1983, along with a Motion to Proceed *In Forma Pauperis* (“IFP”). The Court granted Plaintiff’s Motion to Proceed IFP but simultaneously dismissed his Complaint for failing to state a claim. *See* Apr. 21, 2010 Order at 4-5. Plaintiff filed his First Amended Complaint (“FAC”) on May 24, 2010.

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1       Subsequently, Plaintiff filed a “Motion for Leave to Amend/Supplement First Amended  
 2 Complaint,” Motion to Appoint Counsel, and a “Motion for Law Library Access and Copy of  
 3 Court Docket.” [ECF Nos. 5, 7, 8].

4       The Court denied Plaintiff’s Motion for Appointment of Counsel, granted in part and  
 5 denied in part Plaintiff’s Motion for Law Library Access and copy of Court Docket, and granted  
 6 Plaintiff leave to file a Second Amended Complaint. *See* July 12, 2010 Order at 3. Plaintiff  
 7 filed a Second Amended Complaint on August 16, 2010. Then Plaintiff filed a “Motion for  
 8 Leave to File Third Amended Complaint, Motion for Extension of Time to File Third Amended  
 9 Complaint and Motion for Order for the Clerk to send only my Declaration in my Second  
 10 Amended Complaint” [ECF No. 12].

11       The Court granted Plaintiff’s Motion, in part, and allowed Plaintiff an extension of time  
 12 to file his Third Amended Complaint. *See* Sept. 14, 2010 Order at 2. However, the Court denied  
 13 Plaintiff’s request for a copy of his “declaration” because it simply was not clear what document  
 14 he was referring to. *Id.* at 2.

15       On November 3, 2010, Plaintiff filed a “Motion for Reconsideration in the last Court’s  
 16 Order pertaining to Plaintiff’s extension of time to amend his Complaint” [ECF No. 17]. In this  
 17 Motion, Plaintiff requested one of two options in which he sought a Court order either: (1)  
 18 directing the Clerk of Court to send him a copy of his Second Amended Complaint and provide  
 19 an additional twenty five days to file his Third Amended Complaint; or (2) directing the Warden  
 20 of Kern Valley State Prison to turn over his legal property. The Court again granted Plaintiff  
 21 an extension of time to file his Third Amended Complaint and provided him with a copy of his  
 22 Second Amended Complaint. However, Plaintiff was cautioned that he must show good cause  
 23 for any future requests for extensions of time and the Court will not continue to provide him with  
 24 free photocopies of any future pleadings he chooses to file.

25       Plaintiff then filed his Third Amended Complaint (“TAC”) which is ninety (90) pages  
 26 long, named forty two (42) defendants and contained a different claim against a different  
 27 defendant on each page. Plaintiff also filed a “Motion for 3 Judge Court.”

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1        This Court denied Plaintiff's Motion for "3 Judge Court" and dismissed his Third  
 2 Amended Complaint for failing to comply with Rule 8 of the Federal Rules of Civil Procedure  
 3 and Local Rule 8.2. Plaintiff was granted leave to file a Fourth Amended Complaint.

4        Instead of filing a Fourth Amended Complaint, Plaintiff has filed a "Motion for Extension  
 5 of Time to File and a Request for Additional Count Sheets" and "Motion for Reconsideration"  
 6 of the Court's May 20, 2011 Order.

7 **I. Motion for Reconsideration**

8        Under Rule 60(b), a motion for "relief from judgment or order" may be filed within a  
 9 "reasonable time," but usually must be filed "not more than one year after the judgment, order,  
 10 or proceeding was entered or taken." FED.R.CIV.P. 60(b). Reconsideration under Rule 60 may  
 11 be granted in the case of: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly  
 12 discovered evidence; or (3) fraud; or if (4) the judgment is void; (5) the judgment has been  
 13 satisfied; or (6) for any other reason justifies relief. FED.R.CIV. P. 60(b).

14        In this Motion, Plaintiff claims that he needs additional pages that exceed the limits  
 15 placed by the Local Rules and the Court's Order was "unjust." Pl.'s Mot. at 1-4. Plaintiff also  
 16 argues that the Court was in error when his motion for a "3 Judge Court" was denied. Plaintiff  
 17 claims that due to prison overcrowding and his medical issues, he has adequately shown that he  
 18 requires a "3-Judge court to convene concerning my case because it fits the standards of the  
 19 ruling in *Plata v. Brown* recently decided by the United States Supreme Court." *Id.* at 5.

20        Here, while the Court will permit Plaintiff to exceed the number of pages permitted by  
 21 Local Rule 8.2, the Court's denies Plaintiff's Motion for Reconsideration of the Court's denial  
 22 of the 3-Judge Court as it is not required in this matter pursuant to 28 U.S.C. § 2284.

23 **III. Motion for Extension of Time to File Fourth Amended Complaint**

24        The Court sets forth the above lengthy procedural history in this case to demonstrate that  
 25 Plaintiff has been given adequate opportunities to file his pleadings. This matter is now more  
 26 than a year old and remains in the screening stage. Moreover, with each additional amended  
 27 pleading, Plaintiff has added an overly burdensome number of Defendants and claims. "Prolix,  
 28 confusing complaints such as the ones plaintiffs filed in this case impose unfair burdens on

1 litigants and judges.” *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996). Such complaints  
2 causes judges to “waste half a day in chambers preparing the ‘short and plain statement’ which  
3 Rule 8 obligated plaintiffs to submit.” *Id.* at 1180. The Court will grant Plaintiff an extension  
4 of time and will permit him to file a Fourth Amended Complaint not to exceed forty five (45)  
5 pages. Plaintiff must abide by Rule 8 and all of the previous Court Orders. Plaintiff is  
6 admonished that no further extensions of time will be granted absent *exceptional* circumstances.

7 **III. Conclusion and Order**

8 Good cause appearing, **IT IS HEREBY ORDERED** that:

9 1. Plaintiff’s Motion for Extension of Time and Motion for Reconsideration are  
10 **GRANTED** in part and **DENIED** in part [ECF Nos. 26, 27].

11 2. Plaintiff has forty five (45) days leave from the date this Order is “Filed” in which  
12 to file a Fourth Amended Complaint and it is not to exceed forty five (45) pages. Plaintiff’s  
13 Amended Complaint must be complete in itself without reference to the superseded pleading.  
14 See S.D. Cal. Civ. L. R. 15.1. Defendants not named and all claims not re-alleged in the  
15 Amended Complaint will be deemed to have been waived. See *King v. Atiyeh*, 814 F.2d 565,  
16 567 (9th Cir. 1987).

17 **IT IS SO ORDERED.**

18 DATED: July 7, 2011

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20 Hon. Michael M. Anello  
21 United States District Judge

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